could reasonably expect to be commercially profitable if built on by way of a building scheme.

The Solicitor General's definition seems to me to be too indefinite, and to substitute the opinions of professional witnesses for the enactment of the Legislature, I have come to the conclusion that Mr. Page's reading must be supplemented by the reading suggested by Mr. Lornie in his evidence, namely that land would be suitable for building within the meaning of the Ordinance if it were such that were it put up for sale in small lots purchasers would be found for it who would buy with a view to either building on it at once themselves or to selling at a profit to others who would. I do not say that this is an exhaustive definition but it is sufficient for the purposes of this case.

I accept entirely the valuation of the land as given by Mr. Lornie. His long experience as Collector of Land Revenue and in other capacities in the Land Office of the Colony renders him perhaps more competent than any other person in the Colony to give an opinion on such a matter. Moreover Mr. Carpmael, the Municipal Assessor for the Urban District, who was called as a witness on behalf of the appellant, agrees that Mr. Lornie's valuation is a moderate one. I also accept Mr. Lornie's evidence that the land on the south side of the road and the 40 acres to the north of the road should be considered as building land and not as agricultural land merely, he tells me, and there is no one here more competent to judge as he, that in his opinion were this land sold in small lots people would buy it for building purposes and that some would start building straightaway. His evidence satisfies me that this land is "land suitable for building purposes or capable of being developed for such purposes" within the meaning of the Ordinance.

Mr. Lornie's evidence as to the value of the land is that the land on the south side of the road is worth on an average 20 cents per square foot and that the 40 acres, which is in his opinion building land, on the north side of the road, is worth on an average 8 cents per foot. This works out at a capital value of $8,712.00 per acre for the land south of the road and $3,614.80 per acre for the land on the north, and if he is correct that there are 60 acres to the south and 40 to the north suitable for building the tax on this will work out at $1,615 or $115 more than the amount of the assessment complained of. The objection is however taken on behalf of the appellant that much of this 100 acres does not come within the provisions of the Ordinance relating to the taxation of land suitable for building because it is already built on as it has the huts and sheds of the so called squatters on it. Mr. Carpmael agrees with this contention so far as the land on the north of the road and so far as some 22 acres on the south of the road is concerned.

I have no evidence as to the actual acreage covered by the huts and sheds themselves but if they were all put together they would occupy a very few acres. In some case the "squatters" have enclosed small gardens and compounds but they have clearly no right to these as against the owner of the Estate and I cannot regard these as being appurtenant to the buildings within the meaning of the Ordinance. Mr. Lornie's calculation of the 60 acres on the south of the road allows a margin of a few acres for these huts and this and the $115 margin on the amount of the assessment will fully allow for the diminution of acreage occasioned by the huts themselves. I have therefore come to the conclusion that the assessment is not excessive and that the appeal must be dismissed.

I have not overlooked the argument on behalf of the appellant that there is other land within the Municipal area and nearer to Singapore that is still undeveloped but I do not see that the existence of this undeveloped land can render the appellant's property not suitable for building purposes or not capable of development for such purposes.

Appeal dismissed.

Solicitors for the Appellant—*Allen & Gledhill.*

Solicitor-General for Respondent.

[ORIGINAL CIVIL JURISDICTION]

SHAW, C.J.

September 13, 1924.

RE SHAIK ABUBAKAR BIN MOHAMED LAJAM Deceased.

[SINGAPORE ORIGINATING MOTION No. 8 of 1924.]

Ordinance No. 3 (Wills) S. 13—revocation of will by subsequent marriage—Arab Mohamedan.

So far as concerns immoveable property in the Colony the Will of an Arab Mohamedan is revoked by his subsequent marriage and is thereafter inoperative at least to that extent.

Originating Summons.

Carver & Mundell, for the Applicant, Labu, one of the lawful widows of the deceased.

Robinson for the Respondents, the executors of the Will of the deceased.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

SHAW, C. J.,—This is a motion calling upon the executors of one Shaik Abubakar bin Mohamed Lajam deceased to show cause why the probate of the will of the deceased, granted on

the 25th October, 1915, should not be revoked, in whole or in part, on the ground that the will was revoked by the marriage of the testator with one Labu on the 19th January, 1911 subsequent to the execution of the said will.

It is admitted that the testator was, at the time he made his will on the 20th November 1907, a Mohammedan domiciled at Sheban in Arabia and that he retained that domicile until his death in July 1915.

It was proved to my satisfaction that he was married with the usual Mohammedan ceremonies to Labu at 15 Armenian Street, Singapore on the 19th January, 1911.

By section 13 of Ordinance No. 3 (Wills), which now represents section 14 of the Indian Wills Act No. 25 of 1838 previously in force, it is provided that every will made by a man or woman shall be revoked by his or her marriage except certain wills with which the present case has no concern.

This provision is one peculuiar to English law and is taken from section 18 of the English Wills Act, 1837. The origin of the law is somewhat obscure but it existed as the English law prior to the Wills Act and so long ago as the year 1588 (see *Forse and Hemblings* Case, 2 Co. Part IV 60 (b)). Whether it is a suitable provision to apply to people whose polygamous marriages are recognised by law seems open to question.

So far as the testators's moveable property is concerned it was not, and indeed could not be, contended that the will was inoperative. The testator was at all times a domiciled Arabian and his will is clearly valid as to his moveable property, wherever situated, if it is valid according to the law of his domicile (see *Dicey* on Conflict of Laws 3rd Edition 719 and cases there cited). There is no suggestion that any such provision as that contained in section 13 of our Wills Ordinance exists in Arabia.

The question however whether the Will is operative as to the testator's immoveable property in this Colony is one of more difficulty.

So far as I am aware there is no reported case, except perhaps *In re Martin*, L.R. 1900 p.211, at all directly dealing with the point under consideration and this case has been claimed as an authority in support of both sides of the contention.

The general principle relating to immoveables is set out in *Westlake's* Private International Law, 6th Edition s.156 p.208, as follows:—"All questions concerning the property in immoveables, including the forms of conveying them, are decided by the *lex situs*." The rule is stated much to the same effect in *Dicey* on Conflict of Laws 3rd Edition R. 150 p. 542.

Dealing with wills of immoveables at page 547 Mr. Dicey says "Every question with regard to the devolution of immoveables or land in consequence of death is governed by the *lex situs*. And this is so whether the devolution takes place under an intestacy or under a will." Later on on the same page he says:—"The formalities required for the devise of immovables, whether realty or personalty, the restriction (if any) on such devise or bequest, and generally the validity of a will of lands, are wholly governed by the ordinary testamentary laws of England (lex situs)."

In *Jarman* on Wills, 6th Edition p.2., we find the law stated as follows:—"A disposition of immoveable property situate in England which is invalid by the law of England is not made valid by the fact that it is permitted by the law of the testator's domicile."

These propositions and the cases cited in support of them would therefore appear to establish that the validity of a disposition of immoveable property here depends upon whether or not it is a valid disposition under our local law. It would therefore seem to follow that, the will having been revoked in consequence of the provision contained in section 13 of the Wills Ordinance, it is inoperative so far as the immoveable property here is concerned and there is therefore an intestacy as to this property.

The only doubt as to the correctness of this view arises from the note at page 541 of Mr. Dicey's book where the case of *In re Martin* (*supra*) is referred to as apparently showing that the applicability to a will of English land of the rule that marriage is a revocation thereof is governed by the law of the matrimonial domicile, and from the general statement without qualification, contained in *Jarman* at page 143 and *Tristram and Coote* 15th Edition p. 446. that section 18 of the Wills Act does not apply to the wills of foreigners domiciled abroad, for which proposition the same case is cited.

It does not appear to me however that *In re Martin* is an authority for saying that the will remains in force as to immoveable property. Although Lindley, L.J. says in his judgment that section 18 of the Wills Act does not apply to Wills of foreigners who die domiciled abroad it is clear from the context that he is referring to wills of moveable property only and the final paragraph of his judgment is a direct statement that although in his opinion the will under consideration had been properly admitted to probate it would not apply to leasehold property, that not being regarded as moveable property to which the *lex domicilii* is applicable. The expression of opinion by Vaughan Williams, L.J., disagreeing in this with the view of Sir Francis Jeune, that

the provision contained in section 18 of the Wills Act is a matrimonial and not a testamentary provision seems open to question and in any case it does not appear to controvert the general principle that a will of immoveable property must be valid according to the *lex status*.

I have therefore come to the conclusion that the will under consideration is inoperative so far as the realty is concerned. I do so rather reluctantly because I feel that the provision in our law is somewhat unsuitable in the case of foreigners domiciled abroad, especially to such as practise polygamy and who are probably ignorant of the peculiar provision of our law. This matter must however be put right, if it is thought proper to do so, by the Legislature and not by the Courts.

In my view the original probate should therefore have been restricted to the moveable property of the testator. Whether I can on the present application so vary the probate instead of revoking it seems doubtful in consequence of the terms of section 886 of the Civil Procedure Code. The point however is an academic one as I understand that so far as the moveables are concerned the administration has for many years been concluded.

I therefore direct that the probate of the 25th October, 1915 be revoked.

The costs of all parties as between solicitor and client should come out of the estate.

Order accordingly.

Solicitors for Applicant : *Sisson & Delay.*

Solicitors for Respondents: *Drew & Napier.*

[ORIGINAL CIVIL JURISDICTION.]

WHITLEY, J.

April 18, 1935.

RE THE FIRM OF T. S. N.

[PENANG BANKRUPTCY No. 109 of 1929.]

Bankers' Lien—Customer with accounts at two branches—Bank entitled to charge account at first branch with debt at second branch.

A Bank's customers had an account with the Bank at its branch in Penang. They were also liable to the Bank in respect of indebtedness to the Bank's branches at Medan and Rangoon. Valuable securities were from time to time deposited by the customers with the Bank's Penang branch. These securities were deposited without any documents of hypothecation to secure overdrafts or liabilities of the customers with the Bank's branches in Penang and Medan. The customers became bankrupt. Parts of the securities were realised and the overdraft at the Penang Branch was paid off and part of the Medan liabilities were discharged.

The Official Assignee now claimed to redeem the remaining securities on payment of the amount of the remaining liabilities to the Medan branch. The Bank claimed to hold the remaining securities until all indebtedness of the customers had been discharged, including a large sum admittedly due by the customers to the Rangoon branch of the Bank.

Held, that the Bank had a general lien upon the securities deposited with the Bank's Penang branch and that such general lien extended to cover any indebtedness of the customers at the Rangoon branch of the Bank.

Palgrave Simpson for the Chartered Bank of India, Australia and China.

Hume for the Official Assignee, Penang.

The facts and arguments are sufficiently set out in the Judgment.

Cur. Ad. Vult.

WHITLEY, J.—This was a motion taken out by the Chartered Bank of India Australia and China under section 89 of Ordinance No. 44 (Bankruptcy) for the decision of a question which had arisen as to whether the Bank has a general lien upon certain securities deposited with it by the debtor firm.

There is no dispute as to the facts. On the 14th August, 1929 the date upon which the Receiving Order was made against the firm the Bank had in its possession at its Penang branch a large number of title deeds in respect of immoveable property which had been deposited from time to time by the firm without any documents of hypothecation. These title deeds had been deposited to guarantee overdrafts of the Firm of T. S. at the Bank's Medan branch and to secure an overdraft in Penang which was not to exceed $350,000. The value of the securities deposited appears in the Bank's records as $727,000.

A Scheme of Arrangement was sanctioned by Order of Court dated the 3rd January, 1930 and the land comprised in many of the title deeds has been sold by the Bank with the concurrence of the Official Assignee's Special Manager with the result that the Penang overdraft and part of the moneys due in Medan has been paid off. Title deeds to the nominal value of $246,000 still remain in the possession of the Bank in Penang and The Official Assignee claims that, inasmuch as these securities were deposited with the Bank by way of equitable mortgage for the purpose of securing the amount due to the Bank in respect of the Penang overdraft and the Medan guarantees, he is entitled to redeem them on repayment of any sum still remaining due under the guarantees.

The Bank contends that it has a general lien upon these securities and that it is entitled to retain them until all indebtedness due to it by the firm has been discharged including a large sum admittedly due to its Rangoon branch for the balance due on the firm's cash credit account there.

The general lien of bankers on the securities of customers in their hands is part of the law merchant and is a general usage of which Courts